

§ 136.115

33 CFR Ch. I (7–1–11 Edition)

§ 136.115 Settlement and notice to claimant.

(a) Payment in full, or acceptance by the claimant of an offer of settlement by the Fund, is final and conclusive for all purposes and, upon payment, constitutes a release of the Fund for the claim. In addition, acceptance of any compensation from the Fund precludes the claimant from filing any subsequent action against any person to recover costs or damages which are the subject of the compensated claim. Acceptance of any compensation also constitutes an agreement by the claimant to assign to the Fund any rights, claims, and causes of action the claimant has against any person for the costs and damages which are the subject of the compensated claims and to cooperate reasonably with the Fund in any claim or action by the Fund against any person to recover the amounts paid by the Fund. The cooperation shall include, but is not limited to, immediately reimbursing the Fund for any compensation received from any other source for the same costs and damages and providing any documentation, evidence, testimony, and other support, as may be necessary for the Fund to recover from any person.

(b) Claimant's failure to accept an offer of settlement within 60 days after the date the offer was mailed to the claimant automatically voids the offer. The Director, NPFC, reserves the right to revoke an offer at any time.

(c) A claimant will be notified in writing sent by certified or registered mail whenever a claim against the Fund is denied. The failure of the Director, NPFC, to make final disposition of a claim within six months after it is filed shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim.

(d) The Director, NPFC, upon written request of the claimant or of a person duly authorized to act on the claimant's behalf, reconsiders any claim denied. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. The request must be received by the Director, NPFC, within 60 days after the date the denial was

mailed to the claimant or within 30 days after receipt of the denial by the claimant, whichever date is earlier. Reconsideration may only be requested once for each claim denied. The Director, NPFC will provide the claimant seeking reconsideration with written notification of the decision within 90 days after receipt of the request for reconsideration. This written decision is final. The failure of the Director, NPFC, to make final disposition of a reconsideration within 90 days after it is received shall, at the option of the claimant any time thereafter, be deemed a final denial of the reconsideration.

Subpart C—Procedures for Particular Claims

REMOVAL COSTS

§ 136.201 Authorized claimants.

A claim for removal costs may be presented by any claimant.

§ 136.203 Proof.

In addition to the requirements of Subparts A and B of this part, a claimant must establish—

(a) That the actions taken were necessary to prevent, minimize, or mitigate the effects of the incident;

(b) That the removal costs were incurred as a result of these actions;

(c) That the actions taken were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC.

§ 136.205 Compensation allowable.

The amount of compensation allowable is the total of uncompensated reasonable removal costs of actions taken that were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC. Except in exceptional circumstances, removal activities for which costs are being claimed must have been coordinated with the FOSC.

NATURAL RESOURCES

§ 136.207 Authorized claimants.

(a) Claims for uncompensated natural resource damages may be presented by

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an appropriate natural resources trustee. However, in order to facilitate the processing of these claims with respect to a single incident where multiple trustees are involved and to prevent double recovery, the affected trustees should select a lead administrative trustee who will present consolidated claims on behalf of the trustees.

(b) A trustee may present a claim for the reasonable cost of assessing natural resources damages separately from a claim for the cost of developing and implementing plans for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the natural resources damaged.

§ 136.209 Proof.

In addition to the requirements of subparts A and B of this part, a trustee must do the following:

(a) Submit the assessment and restoration plans which form the basis of the claim.

(b) Provide documented costs and cost estimates for the claim. Final cost estimates for conducting damage assessments or implementing a restoration plan may form the basis for a claim against the Fund for an uncompensated natural resources damage claim.

(c) Identify all trustees who may be potential claimants for the same natural resources damaged.

(d) Certify the accuracy and integrity of any claim submitted to the Fund, and certify that any actions taken or proposed were or will be conducted in accordance with the Act and consistent with all applicable laws and regulations.

(e) Certify whether the assessment was conducted in accordance with applicable provisions of the natural resources damage assessment regulations promulgated under section 1006(e)(1) of the Act (33 U.S.C. 2706(e)(1)). Identify any other or additional damage assessment regulations or methodology utilized.

(f) Certify that, to the best of the trustee's knowledge and belief, no other trustee has the right to present a claim for the same natural resources damages and that payment of any subpart of the claim presented would not

constitute a double recovery for the same natural resources damages.

§ 136.211 Compensation allowable.

(a) The amount of compensation allowable is the reasonable cost of assessing damages, and the cost of restoring, rehabilitating, replacing, or acquiring the equivalent of the damaged natural resources.

(b) In addition to any other provision of law respecting the use of sums recovered for natural resources damages, trustees shall reimburse the Fund for any amounts received from the Fund in excess of that amount required to accomplish the activities for which the claim was paid.

REAL OR PERSONAL PROPERTY

§ 136.213 Authorized claimants.

(a) A claim for injury to, or economic losses resulting from the destruction of, real or personal property may be presented only by a claimant either owning or leasing the property.

(b) Any claim for loss of profits or impairment of earning capacity due to injury to, destruction of, or loss of real or personal property must be included as subpart of the claim under this section and must include the proof required under § 136.233.

§ 136.215 Proof.

(a) In addition to the requirements of subparts A and B of this part, a claimant must establish—

(1) An ownership or leasehold interest in the property;

(2) That the property was injured or destroyed;

(3) The cost of repair or replacement; and

(4) The value of the property both before and after injury occurred.

(b) In addition, for each claim for economic loss resulting from destruction of real or personal property, the claimant must establish—

(1) That the property was not available for use and, if it had been, the value of that use;

(2) Whether or not substitute property was available and, if used, the costs thereof; and